

# NumbersUSA

## Comparison of the Main Immigration Enforcement, Guest Worker, and Amnesty Bills in the 109<sup>th</sup> Congress

	S. 1033 Sen. McCain H.R. 2330 Rep. Kolbe	S. 1438 Sen. Cornyn	H.R. 3333 Rep. Tancredo	H.R. 3938 Rep. Hayworth
BILL TITLE	SECURE AMERICA AND ORDERLY IMMIGRATION (SAOI) ACT OF 2005	COMPREHENSIVE ENFORCEMENT AND IMMIGRATION REFORM (CEIR) ACT OF 2005	REWARDING EMPLOYERS THAT ABIDE BY THE LAW AND GUARANTEEING UNIFORM ENFORCEMENT TO STOP TERRORISM (REAL GUEST) ACT OF 2005	ENFORCEMENT FIRST IMMIGRATION REFORM ACT OF 2005
Amnesty <sup>1</sup> provisions?	YES	YES	NO	NO
What type <sup>2</sup> of amnesty?	<b>MULTI-STEP JACKPOT AMNESTY</b> <b>Step 1:</b> Illegal aliens would pay a \$1,000 fine to apply for a temporary H-5B nonimmigrant visa and work permit (§701). <b>Step 2:</b> After being employed as H-5B workers for six years, they would pay another \$1,000 to adjust to lawful permanent resident (LPR) status and the path to citizenship (§702).	<b>TEMPORARY REWARD AND EXIT AMNESTY</b> <b>Temporary Reward:</b> Illegal aliens who come forward and sign up would receive permission to stay and work in the United States for up to five years (Deferred Mandatory Departure status). <b>Exit Amnesty:</b> Illegal aliens would have to leave the United States within five years in order to apply to return as guest workers (§601).	N/A	N/A

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Who would qualify for amnesty?	Illegal aliens who: have been in the United States illegally since May 12, 2005; have been employed illegally since that date (except that minors must show they have been in school during this period); are not national security threats, polygamists or child abductors; have not been convicted of a crime, other than prostitution or vice, in the United States. The spouse and children of such aliens also qualify for LPR status. Illegal aliens seeking H-5B status would not be required to undergo health screenings to detect communicable or other diseases; nor would they be required to provide proof of immunizations (§701).	Illegal aliens would be eligible for Deferred Mandatory Departure status if they: were illegally present in the United States on July 20, 2004, and have been here since then; were employed prior to July 20, 2005, and have been employed since then; are admissible except for prior unlawful work and unlawful presence; have not engaged in persecution of others; are not subject to a final order of removal; have not failed to depart when granted voluntary departure; are not residents of state sponsors of terrorism; and apply within six months of the date of enactment (§601).	N/A	N/A
Waivers for prior law violations by amnesty applicants?	Convictions for crimes related to unlawful entry or presence or immigration-related document fraud would be ignored. Re-entry after removal and failure to voluntarily depart would be ignored as long as they occurred prior to May 12, 2005 (§701).	DHS may waive any ground of inadmissibility or ineligibility for humanitarian reasons on a case-by-case basis, to assure family unity, or when it is otherwise in the public interest (§601).	N/A	N/A
Estimated number of illegal aliens who could qualify for amnesty?	Most of the 7.1 million adult illegal aliens estimated to have been working in the United States as of May 12, 2005, plus an estimated 3.6 million non-working spouses and minor children, could qualify. <sup>3</sup>	Most of the 6.7 million adult illegal aliens estimated to have been working in the United States as of July 20, 2004, plus an estimated 3.6 million non-working spouses and minor children, could qualify.	N/A	N/A
Legal protections for amnesty applicants?	<ul style="list-style-type: none"> <li>Once an illegal alien files an amnesty application, neither the alien nor his spouse or children may be detained, determined to be inadmissible or deportable, or removed until a final decision on the application is made (§701).</li> <li>Upon filing an application for amnesty, illegal aliens must be granted employment authorization and permission to travel abroad until a final decision on the application is made (§701).</li> <li>Illegal aliens apprehended after the</li> </ul>	<p><b>No special protections.</b></p> <p>In order to qualify for Deferred Mandatory Departure status, illegal aliens would be required to sign a waiver of any right to administrative or judicial review or appeal of an immigration officer's determination of the alien's eligibility, or to contest removal other than on the basis of an asylum claim (§601).</p>	N/A	N/A

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	<p>date of enactment but before the promulgation of implementing regulations who can establish prima facie eligibility for amnesty must be allowed to stay and apply (§701).</p> <ul style="list-style-type: none"> <li>• Illegal aliens who are in removal proceedings must be allowed to apply for amnesty (§701).</li> <li>• Illegal aliens who have been ordered excluded, deported, removed, or to depart voluntarily, but who are still present in the United States, must be allowed to apply for amnesty (§701).</li> <li>• Illegal aliens have the right to appeal the denial of their amnesty application first to USCIS in an administrative process, and then to the Federal courts of appeal (§701).</li> <li>• Illegal aliens also have the right to sue DHS in Federal district courts if they can allege a pattern or practice at DHS that is arbitrary or capricious (§701).</li> <li>• Illegal aliens seeking administrative or judicial review of a denial may not be removed until a final determination establishing ineligibility is rendered (§701).</li> <li>• Information provided by illegal aliens in their amnesty applications may not be used for anything except adjudicating the application unless a law enforcement entity requests such information in writing about one or more specific individuals in connection with a criminal investigation (§701).</li> </ul>			
<b>Amnesty for employers of illegal aliens?</b>	<p>The bill specifically protects the employers of the illegal aliens who apply for amnesty. Such employers would be exempt from civil and criminal tax liability and from civil and criminal liability under immigration law (§704).</p>	No special provision.	N/A	N/A

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<b>Funding for amnesty program?</b>	The bill authorizes the appropriation of such funds as may be necessary to carry out the amnesty (§705).	The bill authorizes \$1 billion to carry out the exit amnesty (§603) and earmarks application fees to pay for activities to identify, locate, or remove illegal aliens (§601).	N/A	N/A
<b>Guest worker provisions?</b>	YES	YES	YES	NO
<b>Modifies existing guest worker program(s)?</b>	No	The bill repeals the H-2B nonimmigrant category, since the new W category encompasses these unskilled workers (§501).	The bill eliminates all current H nonimmigrant visa categories, including H-1B, H-1C, H-2A, H-2B, and H-3 (§101).	N/A
<b>Creates new guest worker program(s)?</b>	<p>The bill creates a new “H-5” nonimmigrant visa category that is supposed to have two subcategories (§301).<sup>4</sup></p> <p><b>1. H-5A visas:</b></p> <ul style="list-style-type: none"> <li>• Are for foreign workers who do not qualify under one of the existing guestworker programs, who provide evidence of employment in the United States, who pay a \$500 fee and undergo a health exam, and who apply from abroad (§301);</li> <li>• Permit spouses and children to accompany workers to the United States (§301);</li> <li>• Are valid for three years and may be renewed once for a consecutive total of six years (§302);</li> <li>• Require the alien to return home after six years in order to apply for a subsequent H-5A visa (§302);</li> <li>• Permit the worker to travel outside the United States and to change employers at will (§302);</li> <li>• Require the alien to return home if he is unemployed for 45 or more consecutive days, though he may reenter on the same visa for however long it remains valid if he again finds employment (§302).</li> </ul>	<p>The bill creates a new “W” nonimmigrant category for workers who do not qualify for H-1, H-2A, L, O, P, or R nonimmigrant visas (§501).</p> <p><b>Aliens seeking W visas must:</b></p> <ul style="list-style-type: none"> <li>• Establish that they are capable of performing the work required;</li> <li>• Prove that they have a job offer from a qualified employer;</li> <li>• Pay a fee of \$500, in addition to the normal visa fees;</li> <li>• Undergo a medical examination;</li> <li>• File an application and provide information about their health, criminal history, gang membership, immigration history, involvement with groups or people engaged in terrorism, genocide, persecution, or who seek the overthrow of the U.S. government, voter registration history, and tax history;</li> <li>• At the discretion of DHS, sign a waiver of any right to administrative or judicial review or appeal of an immigration officer’s determination of the alien’s eligibility, or of any removal action other than on the basis of an asylum claim; and</li> <li>• Sign a certification that all the information provided on the application is true and correct, and</li> </ul>	<p>The bill creates a new H nonimmigrant visa for skilled and unskilled workers who apply from abroad. H visas are valid for up to 365 days in any two-year period and may be renewed every two years (§101).</p> <p>H workers are not permitted to bring family members with them to the United States.</p> <p><b>Aliens seeking H visas must:</b></p> <ul style="list-style-type: none"> <li>• Apply from the home country (§104);</li> <li>• Sign a legally binding affidavit attesting that they understand that they may not adjust status while in the United State, that a child born to them in the United States will not be granted automatic U.S. citizenship, that they waive eligibility for all non-emergency welfare assistance, and that they understand the penalties for noncompliance (§104);</li> <li>• Provide the State Department with information about their education, job skills and employment history (§104);</li> <li>• Be photographed and fingerprinted and undergo criminal background and health checks each time they seek to renew their status (§104).</li> </ul> <p>The Labor Department is required to maintain a database of all aliens pre-</p>	N/A

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	<p><b>2. H-5B visas (Amnesty):</b></p> <ul style="list-style-type: none"> <li>H-5B visas are exclusively for aliens present in the United States illegally (see the Amnesty section above for eligibility criteria).</li> </ul>	<p>that the alien authorizes the release of any of that information for law enforcement purposes (§502).</p> <p>W workers are to be admitted for a period of two years, after which they must return to their home country for at least one year. No alien may reside in the United States as a W nonimmigrant for longer than a total of six years (§502).</p> <p>Neither aliens who spend less than six months a year in the United States, nor aliens who commute each day from as W nonimmigrants are not subject to the time limits listed above (§502).</p> <p>Aliens granted Deferred Mandatory Departure who leave the United States and apply to re-enter as W nonimmigrants may not work in the United States for more than a total period of seven years from when they register for Deferred Mandatory Departure (§502).</p> <p>Family members are not permitted to accompany W workers, though spouses and minor children may visit for up to 30 days at a time (§502).</p>	<p>approved by State as H workers (§105).</p> <p>Once a labor condition application is approved, an employer may access the list of pre-approved workers to select those he wants to hire (§105).</p> <p>State is required to issue the worker an H visa within three days of the alien accepting the job offer (§105).</p>	
<p><b>Numerical limits on affected guest worker program(s)?</b></p>	<p><b>H-5A Program</b></p> <ul style="list-style-type: none"> <li>Initially, the annual cap on H-5A visas would be 400,000. If employers used all the visas in the first quarter of any year, the cap would increase by 20 percent immediately and by 20 percent for the following year. If the visas were all used in the first half of a year, the cap would increase by 15 percent immediately and by 15 percent the following year. If the visas were all used during the third quarter of a year, the cap would increase by 10 percent immediately and by 10 percent the following year. If the visas were used by the end of the year, the cap would increase by 10 percent the following year, and if the visas are not</li> </ul>	<p>NONE</p>	<p>NONE</p>	<p>N/A</p>

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	<p>all used, the cap would decrease by 10 percent the next year (§305).</p> <ul style="list-style-type: none"> <li>50,000 visas are reserved during the first half of each year for non-metropolitan counties that have lost 20 percent of their population in the past 20 years (§305).</li> </ul> <p><b>H-5B Program</b></p> <ul style="list-style-type: none"> <li>No numerical limit.</li> </ul>			
Waivers for prior law violations by guest worker applicants?	<ul style="list-style-type: none"> <li>Except for grounds based on certain criminal convictions, polygamy, child abduction, and national security, DHS may waive any ground of inadmissibility based on conduct that occurred prior to May 12, 2005, for a fine of \$1,500.</li> <li>The penalties for failure to depart after being granted voluntary departure and for reentry following removal would not apply to H-5A applicants.</li> </ul>	<ul style="list-style-type: none"> <li>Unlawful employment, unlawful presence, failure to obtain proper documentation, and bars on re-entry based on immigration violations may be waived for conduct that occurred prior to the effective date of this Act (§502);</li> <li>Inadmissibility based on national security-related grounds or on crimes other than prostitution and vice may not be waived; all other grounds of inadmissibility may be waived for a fee of \$500 on a case-by-case basis for humanitarian purposes, to ensure family unity, or when it is in the public interest (§502).</li> </ul>	NONE	N/A
Protections for U.S. workers (U.S. citizens and legal residents) from guest worker programs?	<ul style="list-style-type: none"> <li>Requires employers wanting to hire H-5A nonimmigrants to attest that they have posted the job opening in America's Job Bank for at least 30 days, and to maintain for at least one year records showing why they did not hire U.S. workers who applied (§308).</li> <li>Requires employers of H-5A workers to verify the work eligibility of all H-5A workers (but not of any other workers) through an electronic verification system (§402).</li> <li>Permits the Labor Department to initiate an investigation of an H-5A employer if there is "reasonable cause" to believe a violation has occurred, but not if the only problem</li> </ul>	<p>Employers may not be authorized to hire W workers until they submit an attestation stating that:</p> <ul style="list-style-type: none"> <li>The job has been posted on a national, electronic job registry for at least 30 days;</li> <li>The employer has offered the job to any U.S. worker who is qualified;</li> <li>The worker will be paid at least the minimum wage; and</li> <li>Employment of the foreign worker will not adversely affect the working conditions of similarly situated Americans (§701).</li> </ul>	<p><b>Employers of H workers must:</b></p> <ul style="list-style-type: none"> <li>Establish that no qualified U.S. workers are available and no such workers could be trained in under one year to perform the work (§101);</li> <li>Advertise the job on America's Job Bank for at least 14 days (§103); and</li> <li>Attest that they will pay the alien the promised wage, that they have taken good faith steps to recruit a U.S. worker, and that they have not laid off any U.S. workers in the past six months and will not in the next six months (§103).</li> </ul> <p>The Labor Department is permitted to use data gathered from America's Job Bank to show whether an employer is making a good faith effort to recruit U.S.</p>	N/A

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	<p>is “lack of completeness or obvious inaccuracies” in the employer’s petition for H-5A workers (§404).</p> <ul style="list-style-type: none"> <li>Prohibits employers from hiring H-5A workers to break a strike or lockout that involves U.S. workers in the same occupational classification and at the same place of employment as the alien (§304).</li> </ul> <p><b>But:</b></p> <ul style="list-style-type: none"> <li>Because illegal aliens must be employed from May 12, 2005, until they are granted H-5B visas, and remain employed in order to adjust to permanent resident status, they have, and will continue to have, a strong incentive to work at any wage level, under any conditions. Their presence in the labor force is thus virtually certain to suppress wages and working conditions for U.S. workers for at least the next six years.</li> <li>Employers of formerly illegal H-5B workers do <u>not</u> have to offer the jobs to U.S. workers, attest that they will pay equal wages or benefits, or use the verification system to confirm the work eligibility of new hires.</li> </ul>		<p>workers.</p> <p>The Labor Department is prohibited from approving any labor condition applications pertaining to an occupational category and geographic region in which real wages have been stagnant or in decline for the six-month period immediately preceding the employer’s filing. Approval of applications may not resume until wages in that occupational category and region have increased each month for six months and the Labor Department has reassessed the prevailing wage to ensure that it reflects the rising rate (§102).</p> <p>The bill doubles the penalties for employers who knowingly fail to comply with the requirements for hiring H workers (§103).</p>	
Wage requirements for guest workers?	<ul style="list-style-type: none"> <li>Employers of H-5A workers must attest that they will pay “the <b>same wages</b>, benefits and working conditions” they provide U.S. workers in the same occupation at the same place of employment (§304).</li> <li>Employers of H-5B workers must pay at least the <b>minimum wage</b>.</li> </ul>	Minimum wage (§701).	The greater of the prevailing wage for the occupation or the median national wage rate (as determined by the Occupational Employment Statistics Survey of BLS) (§103).	N/A
Funding for guest worker program(s)?	<ul style="list-style-type: none"> <li>Applicants for H-5A visas must pay a fee of \$500;</li> <li>Applicants who need a waiver of inadmissibility must pay a fine of \$1,500;</li> <li>The bill authorizes “such sums as may be necessary” to carry out the program</li> </ul>	The bill authorizes \$500 million to carry out this program (§504).	No special provision.	N/A



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	for six years (§309).			
<b>Path to U.S. citizenship for future guest workers?</b>	<b>YES</b> <ul style="list-style-type: none"> <li>• Employment-based immigrant visas (i.e., green cards) are to be made available without limit to H-5A workers whose employers file a petition on their behalf at any time while they are in the United States and to H-5A workers who self-petition after working as an H-5A for at least four years. H-5A workers wanting to adjust to permanent residence must demonstrate the same level of English proficiency and U.S. history and civics knowledge as is required for naturalization or that they are pursuing a course of studies that will allow them to meet those requirements. Three to five years after becoming lawful permanent residents, these workers will be eligible for U.S. citizenship (§306).</li> <li>• H-5B workers also are to be granted permanent resident status without numerical limits once they have had H-5B status for six years, and are employed (or in school), have had a health exam, have no tax liability from when they were working illegally (or are in the process of paying the back-taxes owed, and have a basic understanding of English and U.S. history and civics. Their spouses and children are to be adjusted to permanent resident status, as well (§702).</li> </ul>	No	No	N/A
<b>Changes in legal, permanent immigration levels?</b>	<b>YES</b>	<b>YES</b>	<b>NO</b>	<b>NO NET CHANGE</b>
<b>Increase due to amnesty?</b>	Most of the 7.1 million adult illegal aliens estimated to have been working in the United States as of May 12, 2005, plus an estimated 3.6 million non-working	N/A	N/A	N/A



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	spouses and minor children, could qualify.			
<b>Change in family-based immigration?</b>	The family-preference quota would increase by 400,000 or more in the first year and by a minimum of 254,000 each year thereafter (§601).	N/A	N/A	The bill eliminates the Family 4 <sup>th</sup> Preference category which allots 65,000 visas each year to the siblings of adult U.S. citizens.
<b>Change in employment-based immigration?</b>	The employment-based visa cap would increase by 150,000 to 290,000 from 140,000 each year (§601). This cap would be exceeded to the extent that H-5A workers seeking permanent residence in a year outnumbered visas available under the cap (§306).	The bill increases the annual cap on employment-based visas by the number of employment-based visas that were “unused” <sup>5</sup> in fiscal years 2001 through 2005. While data for 2005 are not yet available, the total number of employment-based visas not issued to employment-based immigrants in 2001 through 2004 was almost 147,000.	N/A	The bill increases the annual cap on employment-based visas by 120,000 to a total of 260,000 visas.
<b>Change in Visa Lottery?</b>	N/A	The bill eliminates the Visa Lottery, which awards 55,000 visas each year through a random drawing.	N/A	The bill eliminates the Visa Lottery program, which awards 55,000 visas annually through a random drawing.
<b>Funding for increase in permanent immigration?</b>	No additional funding is authorized, despite that the bill would dramatically increase the visa processing workload.	No additional funding is authorized.	N/A	No additional funding is authorized.
<b>Immigration Enforcement provisions?</b>	MINIMAL	YES	YES	YES
<b>Provisions to improve border control?</b>	<p><b>Title I of the bill would:</b></p> <p><b>1. Require creation of:</b></p> <ul style="list-style-type: none"> <li>• A national strategy for border security;</li> <li>• A border security coordination plan;</li> <li>• A border security advisory committee;</li> <li>• Pilot programs that use technology to secure the border “without diminishing international trade and commerce;” and</li> <li>• A plan to combat human smuggling.</li> </ul> <p><b>2. Require the United States to:</b></p> <ul style="list-style-type: none"> <li>• Improve communications and information sharing with Mexico;</li> <li>• Provide financial and technical assistance to secure the borders of Central American countries; and</li> </ul>	<p><b>The bill would:</b></p> <ul style="list-style-type: none"> <li>• Increase the number of CBP officers by 1,250 over five years (§101);</li> <li>• Authorize \$500 million for acquisition of high-tech tools to control the borders (§101);</li> <li>• Authorize \$500 million to construct roads and barriers to control the borders (§101);</li> <li>• Expand expedited removal (§102);</li> <li>• Establish a minimum bond of \$5,000 for the release of illegal aliens from noncontiguous countries who are apprehended near the borders (§107); and</li> <li>• Authorize \$50 million over five years to be awarded to Indian tribes with</li> </ul>	<p><b>The bill would:</b></p> <ul style="list-style-type: none"> <li>• Amend <i>Posse Comitatus</i> to permit the military to assist the Border Patrol (§202);</li> <li>• Authorize an increase of 2,000 immigration inspectors (§203);</li> <li>• Suspend the visa waiver program until US VISIT is fully implemented, all ports of entry have biometric machine readers, and all nonimmigrants are processed through US VISIT (§207); and</li> <li>• Require fingerprinting of all U.S. passport applicants (§212) ; and</li> <li>• Prohibit the release of aliens in removal proceedings on their own recognizance (§214).</li> </ul>	<p><b>The bill would:</b></p> <ul style="list-style-type: none"> <li>• Authorize DHS to request the assistance of the military at the borders (§201);</li> <li>• Authorize 1,250 new CBP officers and 10,000 new Border Patrol agents over five years (§202);</li> <li>• Authorize \$5 billion over five years to acquire high-tech equipment and to construct roads, barriers, ports of entry, checkpoints, and Border Patrol stations along the borders (§202);</li> <li>• Expand expedited removal (§203);</li> <li>• Establish a \$5,000 minimum bond for the release of illegal aliens from non-contiguous countries apprehended near the borders (§205); and</li> </ul>

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	<ul style="list-style-type: none"> <li>Provide equipment and technical assistance to secure Mexico's southern border.</li> </ul>	land adjacent to the borders to mitigate the impacts of illegal immigration (§108).		<ul style="list-style-type: none"> <li>Authorize such sums as necessary to distribute to Indian tribes with land on the borders to mitigate the impacts of illegal immigration (§206).</li> </ul>
<b>Mandatory Work Eligibility Verification?</b>	<p>No</p> <p>Only employers of H-5A workers have to verify the eligibility of those H-5A workers under the bill (§402).</p>	<p>Yes</p> <p>All employers would have to verify the eligibility of all new hires within one year after enactment (§321).</p>	<p>Yes</p> <p>All employers would be phased into the system and have to verify the eligibility of all new hires and all current employees within four years (§221).</p>	<p>Yes</p> <p>All employers would have to verify the eligibility of all new hires within 30 days after enactment (§401)</p>
<b>Mandatory Federal cooperation with State/local police?</b>	<p>No</p> <p>Section 125 of the bill actually attempts to limit state and local law enforcement's ability to cooperate with Federal authorities on immigration enforcement.</p>	<p>Yes</p> <p>The bill would:</p> <ul style="list-style-type: none"> <li>Reaffirm the inherent authority of state and local law enforcement officers to assist in the enforcement of immigration laws;</li> <li>Require immigration violators to be entered into the National Crime Information Center (NCIC) database;</li> <li>Require federal immigration authorities to either take custody of illegal aliens apprehended by state or local police or reimburse them for the costs of detaining such aliens and transporting them to federal facilities (§§221-229).</li> </ul>	<p>Yes</p> <p>The bill would:</p> <ul style="list-style-type: none"> <li>Clarify the inherent authority of state and local police to assist in the enforcement of immigration laws (§233);</li> <li>Require immigration violators to be entered into the National Crime Information Center (NCIC) database (§209);</li> <li>Require federal immigration authorities to either take custody of illegal aliens apprehended by state or local police or reimburse them for the cost of detaining such aliens and transporting them to federal facilities (§234).</li> </ul>	<p>Yes</p> <p>The bill would:</p> <ul style="list-style-type: none"> <li>Clarify the inherent authority of state and local law enforcement officers to assist in the enforcement of immigration laws;</li> <li>Require immigration violators to be entered into the National Crime Information Center (NCIC) database;</li> <li>require federal immigration authorities to either take custody of illegal aliens apprehended by state or local police or reimburse them for the costs of detaining such aliens and transporting them to federal facilities (Title I).</li> </ul>
<b>Other provisions to improve interior enforcement?</b>	<p>The bill would:</p> <ul style="list-style-type: none"> <li>Restate current law requiring travel and entry documents to be machine readable and biometric (§401);</li> <li>Require the Social Security Administration (SSA) to create a brand new employment verification system to replace the Basic Pilot Program; however, it does not require the system to produce a final confirmation or non-confirmation of eligibility, nor does it require any employers except those employing H-5A workers to use it, and even they are not required to terminate employees whose eligibility cannot be confirmed (§402);</li> </ul>	<p>The bill would:</p> <ul style="list-style-type: none"> <li>Authorize an increase of 50,000 detention beds over five years (§202);</li> <li>Increase penalties for smuggling, document fraud, gang violence, and drug trafficking (§203);</li> <li>Eliminate judicial review of visa revocations (§205);</li> <li>Reaffirm and expand the Institutional Removal Program to ensure that aliens are either deported or taken into custody immediately upon completion of prison sentences (§207);</li> <li>Authorize increases in the numbers of ICE agents, attorneys, and</li> </ul>	<p>The bill would:</p> <ul style="list-style-type: none"> <li>Authorize an increase of 2,000 detention and removal officers (§204);</li> <li>Authorize certain detention and removal officers to assist in interior enforcement (§205);</li> <li>Authorize an increase in attorneys to prosecute immigration violations (§206);</li> <li>Make the first instance of illegal entry and unlawful presence felonies (§208); <ul style="list-style-type: none"> <li>Increase the penalties for document fraud and false claims of</li> </ul> </li> </ul>	<p>The bill would:</p> <ul style="list-style-type: none"> <li>Expand the Institutional Removal Program to ensure that aliens are either deported or taken into custody immediately upon completion of prison sentences (§112);</li> <li>Increase penalties for smuggling, document fraud, gang violence, and drug trafficking (§115);</li> <li>Eliminate judicial review of visa revocations (§117);</li> <li>Authorize increases in the numbers of ICE agents, attorneys, and immigration judges (§119);</li> <li>Establish a new Assistant Attorney</li> </ul>

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<ul style="list-style-type: none"> <li>• Require SSA to develop a plan to phase all workers into the new employment eligibility system over whatever time frame SSA decides is appropriate (§402); and</li> <li>• Double the penalties for discriminatory hiring and firing practices (§406).</li> </ul>	<p>immigration judges (§208);</p> <ul style="list-style-type: none"> <li>• Establish a new Assistant Attorney General for Immigration Enforcement at the Justice Department to coordinate and prioritize immigration litigation and enforcement (§208);</li> <li>• Require that all background and security checks on an alien be completed before any immigration benefit is provided (§209);</li> <li>• Authorize the denial or postponement of any immigration benefit to an alien involved in an ongoing criminal investigation that is material to admissibility, deportability, or eligibility for the benefit (§210);</li> <li>• Require DHS to digitize its alien records (§212); and</li> <li>• Require social security cards to be made machine-readable, so they can be used as the main document with the new employment eligibility verification system (§311).</li> </ul>	<p>citizenship (§210);</p> <ul style="list-style-type: none"> <li>• Prohibit Federal agencies, and state agencies that provide federally-funded services, from accepting any foreign document to establish identity except a valid passport accompanied by proof of lawful presence in the United States (§211);</li> <li>• Authorize consular officers to require visa term compliance bonds (§213);</li> <li>• Require security improvements in birth certificates (§217);</li> <li>• Require SSA to issue temporary social security cards to nonimmigrants so that the cards expire when their authorized period of stay ends (§223);</li> <li>• Require SSA to notify employers with employees whose names, dates of birth, and social security number do not match (§224);</li> <li>• Prohibit SSA from counting work performed while unlawfully present in the United States toward eligibility for social security benefits (§225); and <ul style="list-style-type: none"> <li>• Require the IRS to change the format of Individual Taxpayer Identification Numbers (ITINs) so they do not look like social security numbers, prohibit the IRS from issuing ITINs to aliens not lawfully present in the United States, and require IRS to share information about ITIN recipients with DHS (§226).</li> </ul> </li> </ul>	<p>General for Immigration Enforcement at the Justice Department to coordinate and prioritize immigration litigation and enforcement (§119);</p> <ul style="list-style-type: none"> <li>• Require that all background and security checks on an alien be completed before any immigration benefit is provided (§120);</li> <li>• Require DHS to digitize its alien records (§122);</li> <li>• Increase fine for submitting incorrect W-2s;</li> <li>• Prohibit SSA from counting work performed while unlawfully present in the United States toward eligibility for social security benefits (§304);</li> <li>• Require security improvements in social security cards (§402);</li> <li>• Authorize 10,000 new DHS personnel to work solely on worksite enforcement and \$100 million to prosecute employers of illegal aliens (§406);</li> <li>• Require DHS and DOJ to integrate fingerprint databases (§407);</li> <li>• Prohibit Federal agencies, state agencies that provide federally-funded services, and financial institutions from accepting any foreign document to establish identity except a valid passport accompanied by proof of lawful presence in the United States (§§501-503);</li> <li>• Require the IRS to change the format of Individual Taxpayer Identification Numbers (ITINs) so they do not look like social security numbers and require IRS to share information about ITIN recipients with DHS (§§504-505); and</li> <li>• Require security improvements in birth certificates (§217).</li> </ul>

	SAOI	CEIR	REAL GUEST	ENFORCEMENT FIRST
Miscellaneous provisions of note?	YES	YES	YES	
Changes in sponsorship requirements?	<p>YES</p> <p>Sponsors of family-based immigrants would have to demonstrate that they have for themselves and can support the immigrants they sponsor at 100 percent, rather than 125 percent, of the poverty level (§605).</p>	No	No	No
Other?	<p><b>The bill would:</b></p> <ul style="list-style-type: none"> <li>Require the federal government to reimburse states for the emergency health care costs of all H-5A and H-5B nonimmigrant workers, in addition to the costs of illegal aliens (§1001).</li> <li>Grant any woman or child in the world “special immigrant status” if the woman or child faces a “credible risk of harm” on the basis of gender or age, respectively, and allow all such special immigrants to receive the same welfare benefits as refugees and to apply for lawful permanent resident status after one year in the United States (§1104).</li> <li>Expand the number of “S” nonimmigrant visas (for informants with information on organized crime or terrorists) from its current level of 250 visas annually to 3,500, and add aliens who can supply information about governments or organizations with weapons of mass destruction (§1105).</li> </ul>	<p><b>The bill would:</b></p> <ul style="list-style-type: none"> <li>Require 100% of each W worker’s Social Security contributions to be placed in a separate account in a Temporary Worker Investment Fund. Distribution of the funds in the account may only be made to the worker after he returns to his home country, or to his estate if he dies prior to returning (§901).</li> <li>Increase the share of unskilled workers who may be admitted as employment-based immigrants each year by more than five times to 36 percent of the total cap from the maximum limit of 10,000 (just over seven percent) under current law (§1003).</li> </ul>	<p><b>The new H guestworker program cannot be implemented until:</b></p> <p>(a) DHS certifies to Congress that:</p> <ul style="list-style-type: none"> <li>US VISIT is fully implemented;</li> <li>The electronic employment eligibility verification system is fully implemented and ICE has an interior enforcement plan that includes worksite enforcement;</li> <li>All Federal databases containing information on aliens have been integrated;</li> <li>The absconder rate is less than five percent for the previous year;</li> <li>Federal immigration authorities consistently respond to requests by state and local law enforcement to pick up illegal aliens;</li> <li>At least 80 percent of visa overstays are located and removed within one year of overstaying (§111).</li> </ul> <p>(b) The Census Bureau conducts a government-wide immigration impact study (§111).</p>	<p><b>The bill would:</b></p> <ul style="list-style-type: none"> <li>Place a three-year moratorium on immigrant visas for Mexican nationals, after which, family-sponsored immigrants from Mexico could not exceed 50,000 in any year (§604).</li> <li>Double from 10,000 to 20,000 each year the number of legal, permanent resident visas for unskilled workers (§602).</li> <li>Eliminate birthright citizenship by requiring that at least one parent be a citizen or lawful permanent resident in order for a child to become a U.S. citizen by birth on U.S. soil (§701).</li> <li>Require the State Department to notify foreign countries when their former nationals become naturalized U.S. citizens and so no longer fall under the jurisdiction of that foreign country (§704).</li> </ul>

*Please contact Rosemary Jenks, Director of Government Relations at NumbersUSA, at (202) 543-1341 if you have questions about this chart or the accuracy of anything in it.*

\* These particular bills were selected because they have received the most public attention, and they represent a broad spectrum of immigration proposals designed to address illegal immigration and the perceived need for foreign labor. A variety of other immigration bills have been introduced, as well, so this paper is not a comprehensive comparison of immigration legislation in the 109<sup>th</sup> Congress.

1. This chart uses the Black's Law Dictionary definition of amnesty: "a sovereign act of forgiveness for past acts, granted by a government to all persons (or a certain class of persons) who have been guilty of a crime or delict."
2. NumbersUSA has identified six types of amnesties for illegal aliens:
  - A. **EXIT AMNESTY:** The lawbreaker is forgiven the crime and not assessed the penalty. The Exit Amnesty waives one or more of the penalties the law currently assesses for illegal immigration, including civil and criminal penalties and bars on legal re-entry. An Exit Amnesty would, however, require illegal aliens to leave the United States.
  - B. **REWARD AMNESTY:** The lawbreaker is actually rewarded for lawbreaking by being given the very thing he/she attempted to steal in the first place. In the case of illegal aliens, most are seeking a job in the United States. A Reward Amnesty would give illegal aliens the legal right to work, either temporarily or permanently.
  - C. **INSTANT JACKPOT AMNESTY:** The lawbreaker wins the jackpot - he/she is instantly rewarded for breaking our immigration laws by being given lawful permanent resident status and put on the path to U.S. citizenship. Instant Jackpot Amnesties generally are limited to illegal aliens of a certain national origin (e.g., the Nicaraguan Adjustment and Central American Relief Act) or who are working in a particular occupation in the United States (e.g., the Special Agricultural Worker amnesty included in the Immigration Reform and Control Act).
  - D. **MULTI-STEP JACKPOT AMNESTY:** The lawbreaker is first given a Reward Amnesty (usually through a legal work permit and temporary resident status or "cancellation of removal"). After a period of time and usually after other criteria (e.g., holding a job; paying taxes; working in a particular industry), the formerly illegal alien is given lawful permanent resident status and put on the path to U.S. citizenship.
  - E. **BLANKET AMNESTY:** This is basically the Instant Jackpot Amnesty but for the entire population of illegal aliens (minus a few exceptions, such as certain criminals), although it may be limited to illegal aliens who have lived in the United States for a certain period. The "general amnesty" included in the 1986 Immigration Reform and Control Act, for example, was a Blanket Amnesty for all illegal aliens who had lived in the United States since January 1, 1982.
  - F. **DE FACTO AMNESTY:** This does not immediately reward illegal aliens with legal status but holds out the promise that if they avoid arrest long enough they will be exempted from the penalties for illegal immigration and granted legal status. The now expired Section 245(i) of the Immigration and Nationality Act is a De-Facto Amnesty because it says that all illegal aliens in the country who have the right through jobs or relatives to apply for lawful permanent resident status may do so from within this country with the tacit assurance that they may remain in this country illegally until their name comes up to the top of the list for a green card sometime in the future.
3. Except as otherwise noted, all estimates are extrapolated from "Unauthorized Migrants: Numbers and Characteristics," by Jeffrey S. Passel of the Pew Hispanic Center, which found that the illegal-alien population was 10.3 million in March 2004. The study is available at: <http://pewhispanic.org/reports/report.php?ReportID=46>. The figures in this chart assume that the illegal-alien population in the United States has increased by a net 500,000 annually since the late 1990s, as estimated by DHS ([http://uscis.gov/graphics/shared/aboutus/statistics/IlI\\_Report\\_1211.pdf](http://uscis.gov/graphics/shared/aboutus/statistics/IlI_Report_1211.pdf)), for a total population of 10.8 million in March 2005. The chart also assumes that the labor force participation rates and gender and age distribution figures provided in the Pew Hispanic Center study have remained constant since 2004.
4. Technically, S. 1033 and H.R. 2330 only create one subcategory of nonimmigrant visas within the new H-5 category they establish. Section 301 of the bill modifies Section 101(a)(15)(H) of the Immigration and Nationality Act to add an H-5A visa for workers applying from abroad who do not qualify under an existing guestworker program. The bills do not, however, add a definition of the H-5B visa to be provided to illegal aliens as the first step in their amnesty.
5. There is no such thing as "unused" employment-based visas since all employment-based visas that are not issued in one year are allocated to the family-preference categories in the next year. Thus, this provision is, in effect, adding new employment-based visas in a number that coincides with the number not issued to workers in each of fiscal years 2001 through 2005, since the visas not issued were allocated to the family-preference categories in the following year.